

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition	:
of	:
CODATA CORP.	: DETERMINATION
for Revision of a Determination or for Refund	:
of Sales and Use Taxes under Articles 28 and 29	:
of the Tax Law for the Period March 1, 1979	:
through February 29, 1984.	:

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Petitioner, Codata Corp., 1 Penn Plaza, New York, New York 10119, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1979 through February 29, 1984 (File No. 802189).

On July 20, 1987 and August 11, 1987, respectively, petitioner and the Division of Taxation, through their duly authorized representatives, waived a hearing in the Division of Tax Appeals and agreed to submit the case for determination based on documents submitted and memoranda of law to be submitted by January 15, 1988. After due consideration of the record, Daniel J. Ranalli, Administrative Law Judge, hereby renders the following determination.

ISSUE

Whether petitioner timely filed in 1983 for a credit on bad debts for sales taxes that were collected and paid over in 1976 and 1977.

FINDINGS OF FACT

1. On March 20, 1985, as the result of an audit, the Audit

Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Codata Corp., covering the period March 1, 1979 through February 29, 1984 for taxes due of \$6,960.63, plus penalty and interest of \$4,184.26, for a total of \$11,144.89.

2. On audit, the Audit Division disallowed bad debt credits totalling \$3,985.99 claimed by petitioner on an amended sales tax return filed on March 8, 1983 for the period March 1, 1979 through April 30, 1979. The bad debt credits claimed were on transactions that occurred in the periods ended November 30, 1976 and November 30, 1977. The balance found due on audit (\$2,974.64) represented a disallowance of the difference between taxable sales as reported on sales tax returns originally filed and those reported on amended returns.

3. Subsequent to the issuance of the assessment, petitioner substantiated the reduction in taxable sales reported on amended returns. Counsel for the Audit Division conceded that the liability should be revised to \$3,985.99, leaving only the disallowance of the bad debt credits to be resolved. The Audit Division also agreed that the bad debts claimed were charged off for Federal income tax purposes on petitioner's return filed for the fiscal year ended June 30, 1982.

#### SUMMARY OF THE PARTIES' POSITIONS

4. The Audit Division took the position that petitioner claimed the credit for bad debts more than three years after the time when the taxes were payable and thus the claim is barred by the statute of limitations provided in Tax Law § 1139(a).

5. Petitioner argued that the bad debt credits were timely claimed in accordance with 20 NYCRR 525.5(c)(1) and (4) and that said regulation is parallel to Internal Revenue Code § 6511(d)(1) which recognizes that bad debts may not be discernible within the usual statutory period of three years and accordingly extends the period for claiming bad debts to seven years.

CONCLUSIONS OF LAW

A. That Tax Law § 1139(a) provides for a refund or credit of any tax, penalty or interest erroneously, illegally or unconstitutionally collected or paid if application therefor is filed within three years after the date when such amount was payable. Subdivision (e) of said section provides that the provisions of subdivision (a) shall be applicable to applications for refund or credit made pursuant to Tax Law § 1132(e).

B. That Tax Law § 1132(e) authorizes the Commissioner of Taxation and Finance (formerly the State Tax Commission) to provide, by regulation, for the exclusion from taxable receipts of amounts representing sales where the contract has been cancelled, the property returned or the receipt ascertained to be un-collectible. The Commission promulgated regulation 20 NYCRR 525.5(c)(4), effective September 1, 1976, regarding bad debt credits which provided, in part, as follows:

"Procedure. The refund or credit shall be applied for with the quarterly return in which the account has been found to be worthless and has actually been charged off for federal income tax purposes. No credit or refund may be sought until such item has in fact been charged off."

Said regulation specified, with respect to cancelled sales and returned merchandise, that an application for credit or refund must be filed within three years from the date when the tax was payable. Regulation 20 NYCRR 525.5 was repealed effective November 19, 1984 and 20 NYCRR 534.7, governing refunds and credits attributable to bad debts, was adopted on the same date. Subdivision (b)(1) provided that a credit or refund for bad debts is required to be filed within three years from the date the tax was payable.

C. That Tax Law §§ 1132(e) and 1139(e) clearly provide that

a claim for refund or credit for bad debts must be filed within three years after the date when the tax was payable. Although 20 NYCRR former 525.5(c)(4) might appear to allow the claim, the time limitation specified in the applicable statutes is controlling. Accordingly, the bad debt credits claimed by petitioner on March 8, 1983 for sales taxes payable in 1976 and 1977 are barred by the statute of limitations.

D. That the petition of Codata Corp. is granted to the extent that the amount of tax due is reduced to \$3,985.99; the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 20, 1985; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
March 3, 1988

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ADMINISTRATIVE LAW JUDGE